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August 15, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: February 2, 2006

Case Number: TSO-0354

This decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored.

**I. BACKGROUND**

The present case concerns an Individual who has been diagnosed with Alcohol Dependence. The Individual does not dispute this diagnosis. Instead, the Individual asserts that he has mitigated the security concerns raised by his Alcohol Dependence.

The present proceeding is the Individual's second DOE Security Clearance Hearing. The first hearing, which was conducted on January 11, 2001, considered the appropriateness of restoring the Individual's DOE Security Clearance after a DOE Consultant Psychologist had diagnosed him with Alcohol Dependence. *Personnel Security Hearing, Case Number VSO-0412*. In that hearing, the Individual questioned the correctness of that diagnosis. The Individual also asserted that he had completely abstained from using alcohol for the 11 months prior to the January 11, 2001 Hearing. *Id.* at 2. The Hearing officer found that the Individual was correctly diagnosed with Alcohol Dependence. *Id.* at 6-7. However, the Hearing Officer further found that, by abstaining from using alcohol for 11 months and committing to abstain from alcohol use while

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

employed at the DOE complex, the Individual had mitigated the security concerns raised by his Alcohol Dependence. *Id.* at 10.

Apparently, the Individual subsequently stopped attending AA meetings and discontinued seeing the EAP Counselor. The Individual also resumed using alcohol. In January 2004, the Individual underwent a Human Reliability Program (HRP) physical which revealed that several of his liver enzymes were elevated in a manner consistent with heavy alcohol use. The Individual entered into a treatment program, but apparently continued to consume alcohol. In 2005, the Local Security Office (LSO) received medical information indicating that the Individual was still using alcohol. A personnel security interview (PSI) of the Individual was conducted, in which the Individual admitted resuming alcohol use. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On July 29 2005, a DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. Transcript of Hearing, Case Number TSO-0354 (Tr.) at 144; DOE Psychiatrist's Report of Examination at 1. On August 3, 2005, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for Alcohol Dependence, with Physiological Dependence, in sustained partial remission, as set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 14. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Alcohol Dependence. *Id.*

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has “. . . been diagnosed by a board-certified psychiatrist . . . as . . . alcohol dependent. . . .” 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual's Alcohol Dependence is “an illness or mental condition of a nature which, in the opinion of a psychiatrist . . . causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h) (Criterion H). Finally, the Notification Letter alleges that the Individual has “Engaged in . . . unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, . . . [a] violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l) (Criterion L).

The Individual filed a request for a hearing. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer. At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented six witnesses: his wife, his Alcoholics Anonymous (AA) sponsor (the Sponsor), his supervisor, a co-worker who is also a close friend, and two substance abuse counselors. The Individual also testified on his own behalf.

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## III. FINDINGS OF LAW AND FACT

### A. Criteria H and J

The Individual does not dispute the DOE Psychiatrist's diagnosis of Alcohol Dependence. Tr. at 90, 116. A finding of derogatory information does not, however, end the evaluation of evidence concerning the Individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in deciding whether the Individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the issue before me is whether the Individual has submitted sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by his Alcohol Dependence. After considering all of the evidence in the record, I find that he has not.

In her Report, the DOE Psychiatrist states:

As adequate evidence of *rehabilitation*[] I recommend the following: Produce documented evidence of attendance at Alcoholics Anonymous for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year and be completely abstinent from alcohol and all non-prescribed controlled substances for a minimum of one year following the completion of this program. This would equal two years of sobriety.

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As adequate evidence of *reformation*, there are two alternatives:

1. If the [I]ndividual goes through the rehabilitation program listed above, 2 years of absolute sobriety would be necessary to show adequate evidence of reformation.
2. If the [I]ndividual does not go through the rehabilitation program listed above, 3 years of absolute sobriety would be necessary to show adequate evidence of reformation.

DOE Psychiatrist's Report at 14 (emphasis in the original).

The Individual recognizes he has an alcohol problem. Tr. at 116. The Individual testified that he plans to permanently refrain from using alcohol. Tr. at 119. The Record shows that the Individual had been attending AA meetings, twice a week, since January 2006. Tr. at 115-16. The Individual has, very recently, obtained an AA Sponsor. Tr. at 109, 115. The Individual has attended and completed an Intensive Outpatient Program (IOP). He is participating in an aftercare program. The Individual meets with a counselor on at least a monthly basis to monitor his progress. Most importantly, the evidence in the Record shows that the Individual has abstained from using alcohol since January 2, 2006. Tr. at 113. Therefore, the Individual had less than 4 months of sobriety at the time of the Hearing. The Individual testified that he does not crave alcohol. Tr. at 144-15. The Individual testified that he plans to stay active in AA for "the long run." Tr. at 117-18. Unlike his previous attempts to achieve sobriety, his family and friends are supportive of his AA involvement. Tr. at 117.

The Individual testified that he is determined to refrain from returning to alcohol use because he is concerned about its effects on his health and realizes he won't have a second chance. Tr. at 110-12. The Individual testified he realized he had an alcohol problem after his meeting with the DOE Psychiatrist. Tr. at 105-06. The Individual testified that he is being more honest and open about his Alcohol Dependency now. Tr. at 106. The Individual testified that he is getting more out of his AA Program during his second time in the program. Tr. at 107-08.

The Individual's EAP Counselor testified at the Hearing on his behalf. The EAP Counselor agreed with the DOE Psychiatrist's diagnosis. Tr. at 132. The Counselor testified that she had begun treating the Individual on February 18, 2004. Tr. at 122. At that time, she referred him to the IOP for alcohol dependence. Tr. at 122-23. The Individual attended the IOP from March 1, 2004 until April 15, 2004. Tr. at 122. On January 6, 2006, the Individual contacted the EAP Counselor to resume counseling and began twice-monthly counseling sessions with her. Tr. at 128-29. The EAP designed a new treatment program for the Individual. Tr. at 129. The Individual briefly entered into an after care program, with the same organization that had implemented his IOP. Tr. at 130. The Individual discontinued attending that aftercare program. Instead, the Individual began attending an aftercare program at a local Department of Veterans Affairs (the VA) facility where he had a higher comfort level. Tr. at 130-31. The Individual provided her with documentation that he has become involved in AA again. Tr. at 131. The

EAP Counselor testified that she has noticed a change in the Individual's attitude and belief system towards addiction. Tr. at 131. The EAP Counselor testified that the Individual now realizes that "his life is unmanageable if alcohol remains in his life." Tr. at 131. She testified that she believes that the Individual is in "Early Recovery." Tr. at 135. She further testified that the Individual now realizes that he is an alcoholic. Tr. at 135. Most importantly, the EAP Counselor testified that she wanted to see the Individual with at least one year of "focused and sustained recovery." before she could conclude that he was "on the right path." Tr. at 138.

The VA Counselor testified on the Individual's behalf. The VA Counselor testified that the Individual began the aftercare program in January 2006, and that the Individual's attendance at aftercare meetings is good. Tr. at 61. The aftercare group meets twice a week. Tr. at 74. The Individual is about one third of the way through the aftercare program. Tr. at 74. The VA Counselor testified that the Individual "stays active and he participates well. You, know, he shares in group. I believe he's doing real good . . . ." Tr. at 61. The Individual generally arrives early for aftercare meetings and often stays late. Tr. at 62. The VA Counselor testified that the Individual has made progress in the aftercare program. Tr. at 65. The VA Counselor testified that he believed the Individual is "on the right path." Tr. at 70. The VA Counselor testified that the Individual realizes "he can't drink successfully." Tr. at 71. The Individual's wife and family are supportive of his efforts to obtain sobriety. Tr. at 71. The VA Counselor agreed that the Individual is Alcohol Dependant. Tr. at 74. The VA Counselor testified that the Individual's Alcohol Dependency was in early remission. Tr. at 75. The VA Counselor testified that the Individual now has some tools to help him maintain his sobriety that he didn't have before when he relapsed. Tr. at 77. The VA Counselor testified that the Individual still needs more time working his programs. Tr. at 78. Specifically, the VA Counselor testified that the Individual needs at least a year. Tr. at 78.

The DOE Psychiatrist was present during the entire hearing to observe the testimony of the Individual and each of his witnesses. After the Individual and his witnesses had testified, the DOE Psychiatrist was called to testify by the LSO. The DOE Psychiatrist testified that the Individual met the criteria for Alcohol Dependence. Tr. at 146, 155. The DOE Psychiatrist testified that the Individual is currently in "a very early stage of recovery." Tr. at 153. The DOE Psychiatrist testified that when she examined the Individual on July 29, 2005, he was not in "any form of recovery at all." Tr. at 156. The DOE Psychiatrist was impressed with the Individual's choice of sponsors. Tr. at 159. The DOE Psychiatrist testified that the Individual needs at least one year of abstaining from alcohol use before he can be considered reformed. Tr. at 159. The DOE Psychiatrist testified that he needed to continue his current treatment program for another year. Tr. at 159. According to the DOE Psychiatrist, the Individual still needs to make "cognitive changes in his belief systems." Tr. at 162. The DOE Psychiatrist summed up her testimony by stating that the Individual hasn't shown adequate evidence of rehabilitation or reformation. Tr. at 162.

The information discussed above shows that the Individual has made a good start towards reformation and rehabilitation of his Alcohol Dependence disorder. However, I am of the opinion that the Individual is not sufficiently reformed or rehabilitated, at this time, to resolve the

security concerns arising from his Alcohol Dependence disorder. This conclusion is based largely upon the testimony of the three expert witnesses who appeared at the Hearing. Each of these three experts testified that the Individual needs to show that he has remained sober for at least one year before he could be considered reformed or rehabilitated. At the time of the Hearing, the Individual had abstained from alcohol use for less than four months. I agree with the three experts' analysis's and conclusions. Accordingly, I find that the Individual has not resolved the security concerns raised under Criteria J and H.

## **B. Criterion L**

During his previous Personnel Security Hearing, the Individual was asked: "Can you not drink from now on if that's what it takes to keep your job?" The Individual responded by stating: "if that's what it going to take to keep my job, I could do it." Transcript of Personnel Security Hearing, Case Number: TSO-0412 at 220. The Individual subsequently resumed his alcohol use. The Notification Letter alleges that doing so, the Individual violated Criterion L, which pertains in pertained part "to [a] violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility" by using alcohol after he had assured DOE Security officials that he would not do so. However, the Individual's testimony at his previous Hearing provided something less than a firm commitment to abstain from future alcohol use. Accordingly, I find that the security concerns raised in the Notification Letter under Criterion L are without merit. Therefore the security concerns raised under Criterion L in the notification have been resolved.

## **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J, H and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: August 15, 2006